

STATE OF MICHIGAN
COURT OF APPEALS

In re CUMMINGS, Minors.

UNPUBLISHED
January 23, 2020

No. 349929
Clinton Circuit Court
Family Division
LC No. 19-028713-NA

Before: CAMERON, P.J., AND SHAPIRO AND SWARTZLE, JJ.

PER CURIAM.

Respondent appeals the trial court's order terminating her parental rights to the minor children, SSC, JC, and LC, under MCL 712A.19b(3)(g) (failure to provide proper care and custody) and (j) (reasonable likelihood that child will be harmed if returned to parent). We affirm.

Respondent has a history of substance abuse. In 2003, her parental rights to a child were terminated because of cocaine substance abuse. In December 2012, SSC was removed from respondent's care after respondent relapsed with cocaine. Respondent successfully completed services and SSC was returned to her care a few months later. For years respondent parented her children without any drug-related issues. However, in March 2019 there were concerns that respondent had relapsed following the death of her husband, the children's father. Respondent denied using any substances, but agreed to a safety plan given the stress caused by her husband's passing. On April 15, 2019, a police officer responded to an anonymous report stating that the children were left alone at home. It was estimated that the children were left alone for hours, and upon her return respondent gave different stories regarding her whereabouts and her reasons for leaving the home. Respondent was acting erratic, and when the officer looked inside her vehicle he saw in plain view several crack pipes in respondent's purse. He found crack cocaine when he searched her purse, and respondent admitted that it belonged to her. Respondent was arrested and was subsequently charged with possession of cocaine and fourth-degree child abuse. The Department of Health and Human Services then filed a petition requesting the children's removal from the home and termination of respondent's parental rights. Respondent pleaded to some of the allegations in the petition, and the trial court assumed jurisdiction over the children.

After her children were removed, respondent had four drug screens between April 16, 2019, and May 7, 2019. All four drug screens tested positive for cocaine, and one tested positive for oxycodone. The caseworker believed that respondent was under the influence at the last parenting time visit she attended before voluntarily checking herself into a rehabilitation center on May 7, 2019. Respondent left the center on May 28, 2019, after completing a 21-day treatment program. However, after that point respondent had no communication with the children and did not attempt to schedule any visits. Respondent began outpatient treatment at Cristo Rey, where she reportedly tested negative for substances, but she stopped her treatment soon thereafter. Respondent did not appear for the July 1, 2019 initial disposition and termination hearing.¹

Respondent's sole argument on appeal is that the trial court clearly erred in finding that termination of her parental rights was in her children's best interests. We disagree.²

When determining whether termination is in the best interests of the child, courts may consider factors such as "the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted). Also relevant is "the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption." *In re White*, 303 Mich App 701, 714; 846 NW2d 61 (2014).

Respondent's significant history of substance abuse plainly factored into the trial court's best-interests determination as it was directly relevant to her inability to provide permanency and stability for the children. It is commendable that respondent completed treatment following SSC's prior removal in 2012 and that she voluntarily sought treatment in this case. However, she stopped participating in her outpatient treatment at Cristo Rey. And after respondent reportedly tested negative at Cristo Rey, the case worker asked respondent to undergo a drug screen test, but respondent did not show up. The prior four drug screens she provided to the caseworker were positive.

The trial court may have been willing to offer respondent an opportunity to participate in additional services if not for the fact that respondent had ceased communicating with her children. The court found it "very revealing" that respondent had not contacted her children "since the middle of May," even after she completed rehabilitation on May 28, 2019. And at the last parenting visit where defendant was visibly intoxicated, the oldest child, SSC, was aware that something was wrong with respondent. Thus, while her children were undoubtedly bonded to her, the trial court understandably questioned whether it was a "healthy bond."

¹ The trial court denied respondent's counsel's request to adjourn the hearing.

² We review the trial court's determination that termination is in the children's best interests for clear error. *In re Schadler*, 315 Mich App 406, 408; 890 NW2d 676 (2016). "A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *Id.* (quotation marks and citation omitted).

Ultimately, the trial court found that the children, particularly the younger children, needed stability that respondent was unable to provide. Indeed, the caseworker testified that SSC had assumed “the role as the mother” with respect to the other children. Further, following her husband’s death, respondent did not seek relief counseling or grief services for herself or her children despite being provided with contact information for those services by the case worker. In contrast, the children’s paternal aunt and uncle had reportedly obtained counseling for the children shortly after their placement in that home. In addition, the aunt and uncle were willing to adopt the children. In sum, based on the record before us, respondent fails to establish that the trial court clearly erred in concluding that termination of her parental rights was in the children’s best interests.

Affirmed.

/s/ Thomas C. Cameron

/s/ Douglas B. Shapiro

/s/ Brock A. Swartzle